A

KRISHNA RAO GURUMURTHI & ANOR

v.

PP & ANOTHER APPEAL

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
ZULKEFLI MAKINUDIN JCA
RAUS SHARIF JCA
[CRIMINAL APPEAL NO: A-05-52-1999]

C

22 MARCH 2007

CRIMINAL LAW: *Penal Code - Sections 302 and 34 - Murder - Appeals against convictions and sentences - Admissibility of discovery statements - Principles applicable - Circumstantial evidence - Whether*

D *convictions safe - Evidence Act 1950, s. 27*

EVIDENCE: *Information leading to fact discovered - Admissibility of statement - Principles applicable - Oppression - Self-inculpation - Issue of whether discovery statements made - Evidence Act 1950, s. 27*

E ***CRIMINAL PROCEDURE:*** *Trial - Admissibility of statement - Discovery statement - Principles applicable - Oppression - Self-inculpation - Issue of whether discovery statement made - Evidence Act 1950, s. 27*

CRIMINAL PROCEDURE: *Trial - Defence - Accused remained silent*

F *upon defence being called and accordingly convicted - Whether accused suffered a procedural injustice - Whether consequences of his electing to remain silent not explained to him*

CRIMINAL PROCEDURE: *Trial - Defence's story - Accused*

G *contended that he had committed only theft and not murder - Whether theft and murder an integral part of one and same transaction - Circumstantial evidence*

EVIDENCE: *Circumstantial evidence - Securing conviction on - Inferences drawn from evidence that accused not only committed theft but*

H *also murder - Whether theft and murder an integral part of one and same transaction - Whether combined strength of evidence sufficient to secure conviction of accused*

I These were two appeals by the first and second accused respectively against their convictions and sentences by the learned High Court judge on four charges of murder. The third accused was acquitted at the close of the prosecution's case and the order

acquitting him was not appealed against. Each accused primarily directed their submissions on the learned judge's decision to admit and act upon the discovery statements made by them while in police custody *ie*, the first accused's statement leading to the discovery of the body of one Balakrishnan, the watchman at the jewellery shop that the accused had burglarised, and the second accused's statement to one ASP Ravinder Singh ('PW14') leading to the discovery of a canvas bag containing jewellery stolen from the shop ('exh. P102') and hidden within an area used by the Police Field Force Ulu Kinta to dispose of hand grenades. It was also submitted that the circumstantial evidence adduced by the prosecution was insufficient to sustain the convictions for murder.

The first accused attacked the admission of his discovery statement on a number of grounds: (i) the fact that the discovery statement had been obtained immediately before the first accused gave his cautioned statement. It was submitted that both statements were part of the same transaction and since the cautioned statement was held to be involuntary and inadmissible, so must the discovery statement; (ii) that on the prosecution's own evidence it was not the first accused but someone else who had provided the police with information as to the whereabouts of Balakrishnan's body. It was submitted that the first accused only had knowledge of the whereabouts of a body and not the body of Balakrishnan, and that the information had come from the police and not from the first accused. This submission went to the question of whether the discovery statement was made; and (iii) that the words "buang mayat" (threw the body) uttered by the first accused ought not to have been admitted by the learned judge because of their unfavourable connotation which had the effect of inculpating him in the crime, and that what should have been admitted was only the first accused's statement agreeing to show where the body was since this was the information that distinctly led to the discovery. The second accused relied on the first two grounds contended by the first accused, contending that his discovery statement had been extracted by means of oppression and questioning whether the discovery statement was made. Upon his defence being called, the first accused elected to remain silent whereupon the learned judge found him guilty and convicted him on all four charges. The first accused submitted that he had suffered a procedural injustice as the consequences of his electing to remain silent were not explained to him and, as such,

A the conviction could not stand. The second accused contended that he and the third accused had found the shop unoccupied and had merely stolen the jewellery, an explanation that the learned judge rejected. The second accused argued that the circumstantial evidence at best only supported the inference that he was a thief,
B and did not admit of an inference that he was involved in the murders.

Held (dismissing the appeals)
Per Gopal Sri Ram JCA delivering the judgment of the
C **court:**

(1) In respect of the first ground, the trial judge here specifically negatived any oppression having been brought to bear on the accused. After due consideration, he accepted the evidence of the police officers on the point and his reasoning
D was unimpeachable. There was another reason why the point could not succeed. The probative value of the first accused's discovery statement far outweighed its prejudicial effect in the sense discussed. For, it merely went to establish the first accused's state of mind – a highly relevant fact. It
E did nothing more. The same reasoning would also apply in relation to the second accused's argument that his discovery statement had also been extracted by means of oppression. *Goi Ching Ang v. PP* (dist); *Kesavan v. PP* (dist). (paras 14, 23)
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(2) In regard to the third ground, the first accused's statement was simply that he had thrown the body, not that he had killed Balakrishnan. If the statement by the accused in *Mamun v. Emperor* that he had buried the dead body of the
G murdered person was admissible, on the facts of the present instance, there was no reason why the first accused's statement should not be admissible. Having regard to the authorities and the facts here, the trial judge was entirely correct in admitting it. *San Soo Ha v. PP* (foll); *Mamun v.*
H *Emperor* (foll). (para 17)

(3) The determination of the second ground entailed a consideration of the approach to s. 27 of the Evidence Act 1950 ('Act'). The common factor among cases dealing with
I s. 27 of the Act is that the section – like so many other areas in the law of evidence – rests on the twin pillars of reliability and accuracy. Accordingly, the first question that a

court must ask itself is this: Did the accused ever make a discovery statement? This turns on the credibility of the policeman who gives evidence of the discovery statement. If the court is satisfied that the first question must be answered in the negative, that is to say, that the alleged statement is a fabrication, then that is the end of the matter and no further steps in the inquiry are necessary. But if the court decided that the first question should receive an affirmative response, then it must ask itself the second question. Is the version of the discovery statement put forward by the policeman giving evidence of it accurate enough to be acted upon? If the accuracy of the statement is in doubt then it should be rejected. Otherwise, it should be accepted. (para 24)

(3a) It was clear from the facts that the learned judge had directed himself on both the issue of credibility and accuracy. He gave cogent reasons for accepting the evidence of the police officers that the discovery statements were in fact made. In concluding that the information given was accurately taken down by the officers concerned, he took into account the discrepancies which lay at the forefront of the attack by the accused before this court. The learned judge's discretion on the s. 27 point was impeccable. There was also a further reason that supported the truth of the information provided by the second accused to PW14. It was that the place where exh. P102 was found was used by the Field Force to dispose of hand grenades. As a former member of the Field Force, there was a strong connection between the second accused and the place chosen for the concealment of exh. P102. The evidence of PW14 was thereby fortified. The approach of the learned judge was in accordance with the principles laid down by the former Federal Court in *Chong Soon Koy v. PP*. It was plain that he asked himself the right questions and addressed the issues with eminent fairness. He excluded the words "which we took from the shop" which had formed part of the information provided to the police by the second accused on the ground that they did not come within the scope of s. 27 of the Act. *Pang Chee Meng v. PP* (foll); *Sum Kum Seng v. PP* (foll); *Chong Soon Koy v. PP* (foll). (paras 29, 30 & 31)

(4) Based on the evidence led by the prosecution, the learned judge was entirely correct in holding that both accused had a case to answer and calling upon each of them to enter upon their defence. (para 32)

(5) A careful perusal of the record showed that after the learned judge had made his order calling for the defence of the first accused, the three alternatives were explained to him. Of course, the record did not spell out each of them. But there is no – and never has been – rule of law or practice imposing such a requirement. What happens in practice is that in all criminal trials, after defence is called, a clerk of court explains the consequence of each alternative to an accused. This is reflected in the notation "three alternatives explained to the accused" made in the notes of evidence without the judge or magistrate writing down each alternative. This has been the practice since time immemorial. It has worked well and there is no necessity to re-visit or alter it. From the record of appeal, it was clear that this practice was adhered to in the proceedings before the learned judge. Accordingly, this submission was devoid of any merit. The first accused having elected to remain silent, the learned judge had no alternative except to convict him. (para 33)

(6) It is settled by authority that in a case where murder and robbery or theft form an integral part of a transaction, the recent and unexplained possession of the stolen property as in the present instance is evidence from which a court may draw the inference that the accused not only committed theft but also murder. Having considered the material in the record and having regard to all the circumstances of the case, the theft or burglary or robbery and the murders were an integral part of one and the same transaction. Put differently, this was not a case of a mere recovery of recently stolen property from an accused person. There were several other cogent pieces of circumstantial evidence which established beyond a reasonable doubt that the first and second accused participated in the commission of the murders in the context of s. 302 read with s. 34 of the Penal Code, and they were all considered by the learned judge. Although both accused argued that each of the items of circumstantial evidence relied upon by the prosecution in

support of its case did not establish a case against them, the combined strength of the evidence together presented quite a formidable case against the accused. *Emperor v. Neamaulla* (foll); *Re Sogaimuthu Padayachi* (foll); *Ganesh Lal v. State of Rajasthan* (foll); *Chan Chwee Kong v. PP* (foll). (paras 36, 39 & 40)

(7) Upon careful scrutiny of the record, the evidence and the judgment under appeal, no points in favour of the accused that went unconsidered by the learned judge could be detected. Indeed, the guilt of the accused was proved beyond a reasonable doubt and their convictions were safe. (para 41)

Bahasa Malaysia *translation of headnotes*

Ini adalah dua rayuan masing-masing oleh tertuduh pertama dan kedua terhadap sabitan dan hukuman yang dijatuhkan terhadap mereka oleh yang arif hakim Mahkamah Tinggi atas empat pertuduhan membunuh. Tertuduh ketiga telah dilepas dan dibebaskan di akhir kes pendakwaan dan tiada rayuan di buat terhadap perintah pembebasannya. Hujah setiap tertuduh, secara pentingnya, adalah tertumpu kepada keputusan yang arif hakim menerima-masuk dan bertindak atas kenyataan-kenyataan penzahiran yang dibuat oleh mereka sewaktu di dalam tahanan polis, iaitu, kenyataan tertuduh pertama yang membawa kepada penemuan mayat Balakrishnan, seorang jaga di kedai barang kemas yang dipecah-masuk mereka, dan kenyataan tertuduh kedua kepada ASP Ravinder Singh ('PW14') yang membawa kepada penemuan satu beg kanvas mengandungi barang kemas yang dicuri dari kedai tersebut ('exh. P102'), yang disorok di satu kawasan yang digunakan oleh Pasukan Polis Hutan Ulu Kinta untuk tujuan pelupusan bom-bom tangan. Juga dihujah bahawa keterangan ikut keadaan oleh pendakwaan adalah tidak mencukupi untuk menampung suatu kes bunuh.

Tertuduh pertama membantah penerimaan kenyataan penzahirannya atas beberapa alasan: (i) fakta bahawa kenyataan penzahiran diperolehi sejurus sebelum memberikan kenyataan beramarannya. Ianya dihujahkan bahawa kedua-dua kenyataan adalah merupakan sebahagian dari traksaksi yang sama, dan oleh kerana kenyataan beramaran telah diputuskan sebagai tidak dibuat dengan rela hati dan tidak boleh diterima-masuk, maka kenyataan penzahiran juga

harus menerima nasib yang sama; (ii) bahawa berdasarkan keterangan pendakwaan sendiri orang yang memberi maklumat kepada polis mengenai tempat mayat Balakrishnan adalah seorang lain dan bukannya tertuduh pertama. Dihujahkan bahawa tertuduh pertama hanya mempunyai pengetahuan mengenai satu mayat dan bukannya satu mayat Balakrishnan, dan bahawa maklumat adalah datangnya dari pihak polis dan bukannya dari tertuduh pertama. Hujah ini menyentuhi persoalan sama ada kenyataan penzahiran telah dibuat; dan (iii) bahawa perkataan "buang mayat" yang dilafazkan oleh tertuduh pertama tidak sepatutnya diterima-masuk oleh yang arif hakim disebabkan konotasi tidak memihak itu mempunyai kesan melibatkan tertuduh pertama dengan kesalahan, dan bahawa apa yang sepatutnya diterima-masuk hanyalah kenyataan tertuduh pertama bersetuju untuk menunjukkan di mana mayat berada kerana itulah maklumatnya yang membawa kepada penemuan mayat. Tertuduh kedua bergantung kepada dua alasan pertama yang dikemukakan tertuduh pertama, sambil berhujah bahawa kenyataan penzahirannya telah diperolehi melalui jalan paksaan sekaligus mempersoalkan sama ada kenyataan penzahiran telah dibuat. Setelah pembelaannya dipanggil, tertuduh pertama memilih untuk berdiam diri dan beliau didapati bersalah dan disabit atas keempat-empat pertuduhan. Tertuduh pertama berhujah bahawa beliau mengalami ketidakadilan prosedur kerana akibat dari pemilihannya untuk berdiam diri telah tidak dijelaskan kepadanya, yang berakibat sabitannya di sini tidak boleh dipertahankan. Tertuduh kedua menyatakan bahawa beliau dan tertuduh ketiga mendapati kedai dalam keadaan tidak berpenghuni dan hanya mencuri barang-barang kemas di situ, namun penjelasannya ditolak oleh yang arif hakim. Apapun, tertuduh kedua terus berhujah bahawa keterangan ikut keadaan yang ada, paling kuatpun, hanya menyokong inferens bahawa beliau adalah seorang pencuri dan tidak bahawa beliau terlibat dengan pembunuhan.

Diputuskan (menolak rayuan-rayuan)

Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Berhubung alasan pertama, yang arif hakim telah secara khusus menolak bahawa sebarang tekanan telah dikenakan terhadap tertuduh. Selepas menimbangkannya dengan wajar, beliau telah menerima keterangan pegawai-pegawai polis berhubung soal ini dan alasan-alasan beliau tidak dapat diragukan. Terdapat satu sebab lain mengapa point ini tidak boleh berjaya. Nilai probatif kenyataan penzahiran tertuduh

pertama jauh mengatasi kesan prejudisnya dalam ertikata yang dibincangkan. Ini kerana ia hanya boleh menunjukkan keadaan fikiran tertuduh pertama – satu fakta yang sangat relevan. Ia tidak menunjukkan apa-apa selain dari itu. Taakulan sama juga boleh digunakan terhadap hujah tertuduh kedua bahawa kenyataan penzahirannya juga telah diperolehi melalui kekerasan. *Goi Ching Ang v. PP* (dibezakan); *Kesavan v. PP* (dibezakan).

(2) Berhubung alasan ketiga, kenyataan tertuduh pertama hanyalah bahawa beliau telah membuang mayat, bukan bahawa dia telah membunuh Balakrishnan. Jika kenyataan tertuduh di dalam *Mamun v. Emperor* bahawa beliau telah menanam mayat orang yang dibunuh telah diterima-masuk, berdasarkan fakta kes semasa, tiada alasan mengapa kenyataan tertuduh pertama tidak boleh diterima-masuk. Mengambilkira autoriti-autoriti serta fakta-fakta di sini, hakim bicara betul dalam menerima-masuk kenyataan. *San Soo Ha v. PP* (diikuti); *Mamun v. Emperor* (diikuti).

(3) Pemutusan alasan kedua memerlukan pendekatan terhadap s. 27 Akta Keterangan 1950 ('Akta') dipertimbang. Faktor umum dalam kes-kes mengenai s. 27 Akta adalah bahawa sekyen tersebut – seperti juga bidang-bidang lain di dalam undang-undang keterangan – bergantung kepada tonggak kembar keboleh-percayaan dan ketepatan. Oleh itu, soalan pertama yang mahkamah harus bertanyakan dirinya adalah: adakah tertuduh ada membuat kenyataan penzahiran? Ini menjurus kepada kredibiliti anggota polis yang memberi keterangan mengenai kenyataan penzahiran. Jika mahkamah berpuas hati bahawa soalan pertama harus dijawab secara negatif, iaitu, bahawa kenyataan yang dikatakan itu adalah suatu pemalsuan, maka ia akan berakhir di situ dan tiada langkah lanjut dalam siasatan diperlukan. Tetapi jika mahakamah memutuskan bahawa soalan pertama harus menerima jawapan afirmatif, maka ia harus bertanyakan dirinya soalan kedua. Adalah versi kenyataan penzahiran seperti yang dibentang oleh anggota polis yang memberi keterangan itu menunjukkan ketepatan yang mencukupi untuk membolehkannya diterimapakai? Jika ketepatan versi disangsikan ia harus ditolak. Jika sebaliknya, ia harus diterima.

(3a) Adalah jelas dari fakta bahawa yang arif hakim telah mengarahkan dirinya kepada kedua-dua isu kredibiliti dan ketepatan. Beliau memberikan sebab-sebab kukuh mengapa beliau menerima keterangan pegawai-pegawai polis bahawa kenyataan-kenyataan penzahiran memang telah dibuat. Dalam memutuskan bahawa kenyataan penzahiran telah diambil dengan tepatnya oleh pegawai-pegawai tersebut, beliau telah menimbang beberapa ketidak-tepatan yang menjadi tunjang bantahan tertuduh di mahkamah ini. Budi bicara yang arif hakim berkaitan soal s. 27 adalah tidak boleh diragui. Terdapat juga satu sebab lain yang menyokong kebenaran maklumat yang diberi oleh tertuduh kedua kepada PW14. Ianya adalah bahawa tempat di mana exh. P102 ditemui adalah diguna oleh Polis Hutan untuk melupuskan bom-bom tangan. Sebagai seorang bekas anggota Polis Hutan, terdapat hubungan yang kuat di antara tertuduh kedua dengan tempat exh. P102 disorok. Sekaligus, keterangan PW14 telah diperkukuh. Pendekatan yang arif hakim adalah selaras dengan prinsip-prinsip yang dibentang oleh Mahkamah Persekutuan dahulu di dalam *Chong Soon Koy v. PP*. Adalah jelas bahawa beliau telah bertanyakan dirinya soalan-soalan yang betul dan menangani isu-isu dengan secara yang amat adil. Beliau menolak perkataan "yang kami ambil dari kedai" yang menjadi sebahagian dari maklumat yang diberikan kepada polis oleh tertuduh kedua atas alasan bahawa ianya tidak dirangkumi oleh skop s. 27 Akta. *Pang Chee Meng v. PP* (diikuti); *Sum Kum Seng v. PP* (diikuti); *Chong Soon Koy v. PP* (diikuti).

(4) Berdasarkan kepada keterangan yang dibawa oleh pendakwaan, yang arif hakim betul dalam memutuskan bahawa kedua-dua tertuduh mempunyai kes yang perlu dijawab dan seterusnya memanggil setiap seorang dari mereka untuk membela diri.

(5) Memerhati rekod dengan teliti menunjukkan bahawa setelah yang arif hakim membuat perintah memanggil tertuduh pertama untuk membela diri, ketiga-tiga pilihan telah diterangkan kepadanya. Pastinya rekod tidak menunjukkan setiap satu penjelasan. Namun, tidak ada – dan tidak pernah ada – kaedah undang-undang atau amalan yang menuntut penjelasan yang terperinci sedemikian. Apa yang berlaku dari segi amalannya adalah bahawa dalam semua perbicaraan

jenayah, setelah pembelaan dipanggil, kerani mahkamah akan menerangkan kepada tertuduh akibat dari setiap satu pilihan. Ini terserlah dari notasi "ketiga-tiga pilihan diterangkan kepada tertuduh" yang dibuat di dalam nota keterangan walaupun hakim atau majistret tidak menulis pilihan tersebut satu persatu. Sejak dahulu lagi inilah amalannya. Amalan ini terpakai dengan baik dan tiada keperluan untuk menyemak atau mengubahnya. Dari rekod rayuan, jelas bahawa amalan ini telah dipatuhi dalam prosiding di hadapan yang arif hakim. Oleh itu, hujah di sini adalah tidak bermerit. Dengan tertuduh pertama memilih untuk berdiam diri, yang arif hakim tidak mempunyai pilihan melainkan untuk mensabitkannya.

(6) Adalah diterimapakai berdasarkan autoriti bahawa dalam suatu kes di mana kesalahan bunuh dan samun atau curi menjadi sebahagian dari satu transaksi, pemilikan barang yang dicuri tidak lama selepas kejadian seperti dalam kes di sini adalah keterangan dari mana mahkamah boleh membuat inferens bahawa tertuduh bukan sahaja telah melakukan curi tetapi juga bunuh. Setelah menimbang bahan-bahan pada rekod dan mengambilkira keseluruhan halkeadaan kes, kecurian atau pecahrumah atau rompakan dan pembunuhan adalah sebahagian dari satu transaksi yang sama. Dengan kata lain, ini bukan semata-mata satu kes penemuan barang curi tidak lama selepas kejadian dari seorang tertuduh. Terdapat beberapa keratan keterangan ikut keadaan yang kukuh dari orang yang dituduh yang menunjukkan di luar keraguan munasabah bahawa tertuduh pertama dan kedua mengambil bahagian dalam perbuatan membunuh di dalam konteks s. 302 di baca bersama s. 34 Kanun Keseksaan, dan semua ini telah dipertimbang oleh yang arif hakim. Walaupun kedua-dua tertuduh berhujah bahawa setiap butiran keterangan ikut keadaan yang pendakwaan bergantung untuk menyokong kesnya gagal membuktikan kes terhadap mereka, keterangan secara kseluruhan telah mengemukakan suatu kes yang kukuh dan kuat terhadap tertuduh. *Emperor v. Neamaulla* (diikuti); *Re Sogaimuthu Padayachi* (diikuti); *Ganesh Lal v. State of Rajasthan* (diikuti); *Chan Chwee Kong v. PP* (diikuti).

A **(7)** Setelah meneliti dengan cermat rekod, keterangan dan penghakiman yang dirayui, tidak ada point yang memihak kepada terduduh yang dilepas pandang oleh yang arif hakim. Sebaliknya, kebersalahan tertuduh telah dibuktikan di luar keraguan munasabah dan pensabitan mereka adalah selamat.

B

Case(s) referred to:
Chan Chwee Kong v. PP [1962] MLJ 307 ***(foll)***
Chong Soon Koy v. PP [1977] 2 MLJ 78 ***(foll)***
Emperor v. Neamaulla 17 CWN 1077 ***(foll)***
Ganesh Lal v. State of Rajasthan [2002] Cr LJ 967 ***(foll)***
C *Goi Ching Ang v. PP [1999] 1 CLJ 829 FC* ***(dist)***
Kesavan v. PP [2003] 1 CLJ 846 CA ***(dist)***
Mamun v. Emperor AIR [1930] Lah 530 ***(foll)***
Pang Chee Meng v. PP [1992] 1 CLJ 39; [1992] 1 CLJ (Rep) 265 SC ***(foll)***
Re Sogaimuthu Padayachi AIR [1926] Mad 638 ***(foll)***
D *San Soo Ha v. PP [1968] 1 MLJ 34* ***(foll)***
Sum Kum Seng v. PP [1981] 1 MLJ 224 ***(foll)***

Legislation referred to:
Evidence Act 1950, s. 27
Penal Code, ss. 34, 302
E Evidence Act [Ind], s. 114

(Civil Appeal No: A-05-52-1999)
For the appellant - V Rajadevan (Sivaganish with him); M/s Rajadevan & Assoc
F *For the respondent - Noorin Badaruddin DPP (Hanim Mohd Rashid DPP with her)*

(Civil Appeal No: A-05-56-1999)
For the appellant - Malik Imtiaz Sarwar (HL Ang, M Lavendran & Amelly Kok with him); M/s Ngeow & Tan
G *For the respondent - Noorin Badaruddin DPP (Hanim Mohd Rashid DPP with her)*

[Appeal from High Court, Ipoh; Criminal Trial No: 45-20-98, 45-21-98, 45-22-98 & 45-1-99]

H *Reported by Suresh Nathan*

JUDGMENT

Gopal Sri Ram JCA:

I **[1]** There are two appeals before us. One of them is Criminal Appeal No. A-05-52-99. We will refer to the appellant in that appeal as the first accused. The other is Criminal Appeal No. A-05-56-99 in which we will refer to the appellant as the second

accused. Both appeals were taken together. In the court below the first and second accused together with one Kumaresan (now at liberty) were jointly tried on four charges of murder. Surprisingly, Kumaresan (the third acussed) was acquitted at the close of the prosecution's case despite the rather compelling evidence that was led against him. Unfortunately the order acquitting him was not appealed against. The first and second accused were, however, called upon to enter their defence and were convicted on all four charges. Each appealed against his conviction and sentence. At the close of argument on these appeals, we dismissed them. In giving reasons for our decision we are spared from regurgitating the facts in detail or narrating the evidence at length as the learned judge (whose judgment has been reported in [2000] 1 CLJ 446) has handled them admirably.

[2] The case presented by the prosecution at the trial is as follows. Kedai Emas Chitra is a jewellery shop in Ipoh. It is owned by PW26 (Nalliah Periasamy). He and his wife (Virama) ran the business. They had a maid, Juriah who also helped out. They had a 15 year old son, Sathian. There was a watchman at the shop. He was Balakrishnan. At about 1am on 13 March 1998, PW33 (Harminderjit Singh) was near the jewellery shop. His attention was attracted by the sound of the burglar alarm from the jewellery shop. He saw a car parked outside the shop. It was a Proton Iswara No PCV 7749. He saw a person sitting in the driver's seat. A short while later he saw two other persons come out from the shop. They got into the car and drove away. PW33 followed them until he lost them along Jalan Gopeng. He then went off to have his supper before going to the police station where he reported what he had seen. A police team then proceeded to the shop. They found the watchman missing. The shop had been burgled. Much of the jewellery had been taken. A short while later, acting on information provided by a neighbour, the police proceeded to PW26's home. There they found the bodies of Virama, Sathian and Juriah. All three had been violently killed. Sathian and Juriah were found to be tied up with red and yellow fibred rope. The police recovered two blood stained blades (exh. P12A and P24A) from a pair of scissors, one of which had its end broken.

[3] The evidence of circumstances led by the prosecution to implicate the accused in the murders of Virama, Sathian, Juriah and Balakrishnan is as follows. On the morning of 12 March, Virama and Juriah came to the shop. PW26 was not present as he away in India attending to a family matter. However, before his departure, he handed all the keys to the shop and the safe to Virama. At about 6.30pm on 12 March, PW20 saw Virama and Juriah leave the shop in a taxi. Balakrishnan locked up the shop and remained inside. The keys to the shop and safe were with Virama. When the police arrived at the shop, they found no evidence of a forced entry. They found that all the doors had been opened with their respective keys. They found two of the keys on the premises of the shop. These were among the keys that were in Virama's possession after she had locked up the shop the previous evening. While conducting their investigations at the house, the police found the bunch of keys for the shop and safe to be missing.

[4] At about midday on 13 March 1998, acting on the information in their possession, the police arrested the second and third accused at No. 14A, Lahat Lane, Ipoh. They also recovered the Proton Iswara that PW33 had seen outside the jewellery shop. The car was found at an underground car park of a flat opposite Wisma Chin Hoo, Jalan Hussein, Ipoh. Later, the police arrested the first accused at Room 502, Hotel Ritz Kowloon, Ipoh. Later, on the same afternoon, the police recovered another car, a Proton Iswara No ACQ 4222 at No. 14A Lahat Lane, Ipoh. Both these cars were traced to PW11 (Ramanieswaran Sundram). PW11 had rented both cars to the second and third accused. Car No ACQ 4222 had been rented to them on 8 March 1998 and car No PCV 7749 on the late night of 12 March 1998.

[5] On 13 March 1998, while being questioned, the first accused gave certain information to the police about the whereabouts of Balakrishnan. He then led the police to a place at km 292.4 of the North-South Toll Highway where Balakrishnan's body was discovered. He was also bound with a red and yellow fibred rope.

[6] The second accused also gave certain information while in police custody and led the police to a place within an area used by the Police Field Force Ulu Kinta to dispose of hand grenades. From that place were recovered some of the items of the jewellery that had been removed from the shop. The second accused had previously served as a member of the Police Field Force.

[7] A post-mortem on all four victims was conducted by PW2 (Dr Khairul Azman), a forensic pathologist attached to the Ipoh Hospital. It revealed that all four victims had died of multiple stab wounds caused by a sharp object similar to exh. P12A and P24A. PW2 confirmed that similar red and yellow fibre strings (exh. P31A) were used to tie up Balakrishnan, Sathian and Juriah.

[8] It must be said for completeness that cautioned statements were recorded from all three accused. They were however excluded from evidence as the learned trial judge held them to be involuntary and inadmissible following a trial within a trial.

[9] Based on the totality of the evidence led before him, the learned judge called for the defence of the first and second accused. The first accused remained silent. The second accused gave evidence. At the conclusion of the whole case the learned judge convicted the accused and imposed upon them the mandatory capital sentence.

[10] Before us, learned counsel for each accused primarily directed their submissions on the learned judge's decision to admit and act upon the discovery statements made by the accused while in police custody. It was also submitted that the circumstantial evidence adduced by the prosecution was insufficient to sustain the convictions for murder.

[11] Let us first deal with the circumstances surrounding the discovery of the body of Balakrishnan. It is in evidence that the first accused was brought before and questioned by PW15 (Inspector Buba Garan) at about 10.25pm on 13 March 1998. Immediately after obtaining the information, PW15 made a police report (exh. P87) at about 11pm. The report is to be found at p. 682 of the appeal record). According to PW15's evidence, the first accused brought the police party by way of the Simpang Pulai toll plaza and then onto the highway heading towards Kuala Lumpur until they reached km 292.4 at which point the first

accused then asked the party to stop. When they were on the upper roadside of the highway, the first accused pointed out to the police party a body that was at a well lit area of the highway. PW15 found that it was a body of a man in a sitting position. This was at about 11.55pm.

[12] Learned counsel for the first accused attacked the admission of the discovery statement of the first accused on a number of grounds. First, he relied on the fact that the discovery statement had been obtained immediately before the first accused gave his cautioned statement. It was submitted that both statements were part of the same transaction. Since the cautioned statement was held to be involuntary and inadmissible so must the discovery statement. Counsel relied on *Goi Ching Ang v. Public Prosecutor* [1999] 1 CLJ 829 in support of his submission. In that case, the Federal Court held that s. 27 operated independently of s. 24 so that the requirement of voluntariness which is the essence of the latter provision formed no part the former. This was, however, subject to the overriding discretion of a criminal court to exclude evidence on the ground that its prejudicial effect outweighed its probative value. In other words, evidence that may be tenuous grounds for holding it admissible may nevertheless excluded by a trial judge on the ground of its prejudicial effect. Whether the discretion ought to be exercised in favour of an accused is a matter that depends on the facts of each case.

[13] *Kesavan v. Public Prosecutor* [2003] 1 CLJ 846 provides an illustration of how the discretion is to be exercised on the facts of a particular case. In that case, the accused was apprehended while carrying two packages which were found to contain a proscribed drug. Despite objection being raised by the defence, evidence was admitted to show that on being accosted the accused fell at the arresting officer's feet and begged for help. The purpose or object of putting in this evidence was to prove that the accused knew that the packages contained the drug in question. It was argued that the evidence was inadmissible as no caution had been administered. But it was not possible for the arresting officer to administer a caution given the circumstances. On appeal this court held that the evidence though technically admissible should have been excluded by the judge in the exercise of his discretion. The conduct of the accused in begging the arresting officer aside, there was ample other evidence to prove

beyond a reasonable doubt that the accused had the requisite knowledge. So evidence of the accused's conduct was merely prejudicial without doing anything to improve the prosecution's case.

[14] The facts of the present case are very different and readily distinguishable. Here, the trial judge specifically negatived any oppression having been brought to bear on the accused. After due consideration he accepted the evidence of the police officers on the point and we find his reasoning to be unimpeachable. There is another reason why the point cannot succeed. The probative value of the first accused's discovery statement far outweighed its prejudicial effect in the sense discussed. For, it merely went to establish the first accused's state of mind – a highly relevant fact. It did nothing more.

[15] The second ground raised by learned counsel against admitting the discovery statement was this. He submitted that on the prosecution's own evidence it was not the first accused but someone else who had provided the police with information as to the whereabouts of Balakrishnan's body. Counsel said that that is the fair inference to be drawn from the independent facts. In support of his argument learned counsel drew our attention to the police report exh. P87 which is at p. 682 of the record of appeal. According to that exhibit the first accused told PW15:

Saya boleh tunjukkan tempat saya buang mayat

which when translated into English reads "I can show the place where I threw the body". In a later passage in exh. P87 PW15 states that the first accused told him that he would show the place where he threw the body of the jaga or watchman. Learned counsel also relied heavily on PW15's evidence under cross-examination where he said that what actually happened was that the first accused spoke in Tamil and said that he agreed to show PW15 where he had disposed of a body. It was submitted that the discrepancies in the evidence above supported the inference that the first accused only had knowledge of the whereabouts of a body and not the body of Balakrishnan. It was further submitted that the evidence adverted to merely confirmed the suspicion that the information of the whereabouts of the body of Balakrishnan had come from the police and not from the first

A accused. This submission goes to the question whether the discovery statement was made and since a similar point was taken by the second accused we will comment on these arguments at the appropriate place in his judgment.

B **[16]** The third attack on the discovery statement relates to the admission by the trial judge of the words "buang mayat" (threw the body) uttered by the first accused. It was submitted that those words ought not to have been admitted by the learned judge because of their unfavourable connotation which had the C effect of inculpating him in the crime. According to counsel what should have been admitted is only the statement of the first accused agreeing to show where the body was since this was the information that distinctly led to the discovery. There is a short answer to this point. It is to be found in the case of *San Soo Ha* D *v. Public Prosecutor* [1968] 1 MLJ 34. In that case, the accused was charged with housebreaking and theft of property. He gave a statement to a police officer to the effect that the stolen money was kept in his room. As a result of such information, the accused led a police party to his flat where the police recovered property E proved to belong to the complainant. Objection was unsuccessfully taken before the President of the sessions court on the admissibility of the words "stolen money". The accused was convicted and appealed. In dismissing his appeal against conviction, Raja Azlan Shah J (as his Royal Highness then was) F said this:

> On the legal position that arises in such circumstances there is a wealth of weighty Indian authorities. It is established law that such words as 'I have concealed,' 'I have hidden,' 'I have kept' are admissible in evidence as evidence as coming within the G purview of section 27 of the Indian Evidence Act (see *Rama v. State* AIR [1952] Bom 299). Thus, in the present case if the words used are 'the money was kept in his room', they are admissible on the ground that those words distinctly and positively relate to the fact discovered and which is necessary to be proved in order adequately to explain such discovery. Does the inclusion H of the word 'stolen' provoke section 27 of the Evidence Ordinance? Reference was made by counsel to the local case of *Hashim & Anor v. Public Prosecutor* [1956] MLJ 233 in which it was held that the words 'used in the murder' were not admissible. The facts in that case are different from present consideration I although the principles are of general application. **In the final**

analysis each case of this kind depends on the particular facts to which the general principle must be applied. In a Pepsu High Court case the statement of the accused that he had concealed the abducted woman Mt. Surjit Kaur in the house of Gobind Singh and that he could get her recovered from that place was allowed under section 27 of the Indian Evidence Act. The court did not accept the suggestion that the words 'abducted woman' connected that the woman had been abducted by the accused. They only meant 'an abducted woman' and that the accused did not say that he had abducted the woman in which case perhaps that portion would have been liable to be excluded from consideration. (See *Vidya Prakash v. State* AIR 1954 Pepsu 72). One of the cases referred to in that judgment is the case of *Mamun v. Emperor* AIR 1930 Lah 530. There, the statement of the accused that he had buried the dead body of the murdered person at the place pointed out by him was held to be admissible under section 27 of the Indian Evidence Act. In the case before us the statement of the appellant, 'the stolen money was kept in his room' cannot be taken as a confession of guilt. The appellant did not say that he stole the money, in which case, perhaps, that portion would be liable to be excluded from circulation. It only means 'a stolen property'. In my judgment that statement is unobjectionable.

[17] So too here. The first accused statement was simply that he had thrown the body. He did not say that he had killed Balakrishnan. If the statement by the accused in *Mamun v. Emperor* that he had buried the dead body of the murdered person was admissible, we are unable, on the facts of the present instance to see why the first accused's statement should not be admissible. Having regard to the authorities and the facts here, the trial judge was, in our judgment, entirely correct in admitting it.

[18] In the case of the second accused, he made his discovery statement to PW14 (ASP Ravinder Singh) in the course of being questioned. PW14 made a note (exh. P103) of the information provided by the second accused. The information was given in Tamil and was translated to PW14 by PW29 (Inspector Raguraman). Exh P103 reads as follows:

OKT: Rajendran a/l Muthumanickam

Katanya 'Saya setuju tunjukkan barang kemas yang kami ambil dari kedai emas itu, saya ada sembunyikan dalam satu beg di tempat buang grenade Ulu Kinta.'

[19] In English it reads:

> Suspect: Rajendran a/l Muthumanickam
>
> He said 'I agree to show the jewellery we took from the shop, I hid it in a bag in at the at the place for throwing away grenades in Ulu Kinta.'

[20] PW29 read back P103 in Tamil to the second accused who confirmed the contents of that exhibit and signed it. PW14 and PW29 also signed P103. PW14 then made a police report (exh. (P104) based on exh. P103. P104 reads as follows:

> ... semasa saya dengan dibantu oleh Insp Raguravan sedang membuat pertanyaan ke atas seorang lelaki India nama, Rajendran a/l Muthumanickam ... telah ingin menyuarakan mengenai tempat emas yang dinyorok selepas disamun oleh mereka bertiga.

[21] In English it reads:

> ... while I was interrogating an Indian man named Rajendran a/l Muthumanickam with the assistance of Insp Raguravan ... he wanted to say something about a place where the jewellery robbed by the three of them were hidden.

[22] As a result of such information, a police party led by PW14 proceeded to the Ulu Kinta Field Force area. On arrival, PW14 saw a tree there. The second accused then pointed in the direction of the tree and said that he had hidden the jewellery at its base. PW30 (Sergeant Subramaniam) then dug at the tree base and found a canvas bag (exh. P102). It contained jewellery which PW26 later identified as having been stolen from the shop.

[23] Learned counsel for the second accused also argued against admissibility of his client's discovery statement on the ground that it had been extracted by means of oppression. He submitted that the discovery statement formed part of the same transaction as cautioned statement that been ruled as inadmissible by the judge. He too relied on *Goi Ching Ang (supra)* in support of submission. We reject the submissions of learned counsel and would merely adopt what we have already said in relation to the identical point taken by counsel for the first accused. For good measure we reproduce what the learned judge said on the issue which we find to be beyond criticism:

> In any case, I could not find any evidence of any form of oppression beyond that which was reasonably expected and required by the police to obtain information to find the killers of the four persons. Both the Inspector and the ASP had denied under cross-examination that the two accused were assaulted while they were being interrogated. It is true the interrogations were carried out by a team of officers over long hours, but I would not consider them oppressive as they were each interrogated only on one occasion – in the case of the first accused on 13 March 1998 from 4.10pm to 10.25pm and in the case of the second accused on 15 March 1998 from 2pm to 11pm. The objective of an interrogation is to find the doer of a criminal act and is very much a legitimate aspect of our criminal justice system. How else could the police obtain information from a suspect?

[24] We now turn to the other point also taken by counsel for the first accused namely whether the discovery statements were made. Before we express our views upon the argument addressed to us it is best that we remind ourselves of the statutory provision we have before us. The way in which s. 27 of the Evidence Act should be approached has been fairly worked out in the many decided cases that have discussed it. There are so many that it is neither feasible nor desirable to discuss them all here. But the common thread that runs through all of them is clear enough. It is that the section – like so many other areas in the law of evidence – rests on the twin pillars of reliability and accuracy. Accordingly, the first question that a court must ask itself is this: Did the accused ever make a discovery statement? This turns on the credibility of the policeman who gives evidence of the discovery statement. If the court is satisfied that the first question must be answered in the negative, that is to say, that the alleged statement is a fabrication, then that is the end of the matter and no further steps in the inquiry are necessary. But if the court decides that the first question should receive an affirmative response, then it must ask itself the second question. Is the version of the discovery statement put forward by the policeman giving evidence of it accurate enough to be acted upon? If the accuracy of the statement is in doubt then it should be rejected. Otherwise it should be accepted.

[25] Both questions are fact sensitive and judges by their training have little or no difficulty in resolving such questions. Once the trier of fact has arrived at a conclusion one way or the other on either or both of these questions, his or her view is entitled to be respected by an appellate court and should not be disturbed unless there has been no judicial appreciation of the evidence.

[26] *Pang Chee Meng v. Public Prosecutor* [1992] 1 CLJ 39; [1992] 1 CLJ (Rep) 265, affirms the credibility requirement. In that case, Abdul Hamid Omar LP when delivering the judgment of the Supreme Court said that:

> … courts should be very vigilant to ensure **the credibility of evidence by the police personnel** in respect of this section, which is so vulnerable to abuse. (emphasis added.)

[27] *Sum Kum Seng v. Public Prosecutor* [1981] 1 MLJ 224 underpins the second requirement of accuracy. There, Chang Min Tat FJ said:

> The fact that the information was told the trial court in substance does not, per se, make it inadmissible. All the more so, when, as it so clearly appears in this case, it was only in indirect speech and it was so close to the direct that there was no apparent difference. 'The accused admitted burying weapons somewhere and offered to show me the place' is but an indirect rendering and not a paraphrase or a substitution of "I have buried weapons somewhere and I can show you the place."
>
> …
>
> [W]hile there is no strict necessity at law to give the actual words used by an accused person in supplying the information that led to the discovery of a fact or thing and comes within the provisions of section 27, both the decisions referred to and commonsense stress the desirability that the actual words be recorded somewhere. The record is also as much for the protection of the particular officer concerned, be he the investigating or the interrogating officer, as for the purpose of determining its admissibility. We believe all police officers carry note books with them and we see no practical difficulty of any kind hindering any officer interrogating an accused person from jotting in his note book such a vital piece of information, on which the whole case against the accused may depend. It would not take him more than a minute or so. Ideally it should be done at the moment it was made. We appreciate that the immediate

> concern of the police is to recover the subject-matter of the information but we fail to see how a delay of a minute or so can make any material difference. Afterwards, the officer can refer to this note as the actual information given by the accused leading to the discovery of the fact. The note may, of course, be made afterwards but as we have said, we can see no reason why it should not have been made at the time the information was given and why the police officer should forego the value of a contemporaneous record which goes so far to establish his credit as a truthful witness. So far as the trial court is concerned, it ought to be realised by all concerned, particularly by the prosecution, that the court has a clear duty to admit under section 27 only that part of the evidence which falls squarely within the provision of a statement leading to the discovery of a fact and that it would be immensely assisted in its task if the prosecution were strictly careful to limit the evidence to the actual statement given.

[28] Now, the learned judge in this case began his direction on the discovery statements by asking himself the question whether they were in fact made. He then said:

> Having heard the evidence of the police personnel and the officers who received the two sets of information, Inspector Bubagaran and ASP Ravinder Singh, and the submissions of counsel for the accused and the learned Deputy Public Prosecutor, I am convinced that there is no ground to disallow their admission under s. 27 of the Evidence Act 1950. I am satisfied at this stage of the trial that they are reliable for the following reasons:
>
> Firstly, although the entries in the station dairy of the D-Team had been falsified to show the three police detectives were at a different place when they were supposed to be interrogating the first accused, both Insp Bubagaran, and Jegathesan (the person who made the entry 3027 and entry 3032) had admitted that the entry was entered that way to show team participation in order to gain merits in the detective journal. What actually transpired it was explained, was that only the Inspector had gone to Sg Pari to arrest the suspect. The detectives had stayed behind at the Bilik Gerakan and were in fact interrogating the first accused there from 4.25 pm to 10.20 pm. They had also explained that the purpose of false entries was to gain some recognition in the Detective Journal for all the three of them rather than for only the Inspector as they worked as a team. I accept their explanation.

As for entries 3024 and 3025, an explanation was given by ASP Mohd Zaidon (PW18) that the meeting of all the officers and personnel of his division D-7 had in fact taken place at his office and that the Inspector and the three detectives were excused from the attendance to enable them to continue with their interrogation of the accused at the Bilik Gerakan. He said Ramasamy had asked his permission for Inspector Bubagaran and the three of them to be excused from attending the meeting as they and Inspector Buba for the reason that they were conducting interrogation in a murder case, and that he had agreed. ASP Mohd Zaidon's evidence therefore confirms not only that interrogation of the first accused did take place but also that the three police detectives did interrogate him at the Bilik Gerakan.Secondly, I could find no such evidence that the police had already known of the existence of the body at the 292.4 km of the North-South Toll Highway and the jewellery at the tree at the Police Field Force area in Ulu Kinta, to support the contention that the body and the jewellery were recovered and not discovered and therefore could not qualify for admission under s. 27.

Inspector Bubagaran who arrived at the place with his police party under the guidance of the first accused said that when his party arrived, no other persons were there. His evidence was corroborated by the evidence of the other members of his party and by ASP Ravinder who arrived later with another police party after being informed by Insp Bubagaran by handphone that the body had been found.

Further, the ASP as the investigation officer, had in the face of strenuous cross-examination creditably denied that the police had known of the existence of the body and the jewellery.

Thirdly, the fact that there were some differences between the words used in the police report and the notes written down by the ASP were only to be expected. They were two different documents, the police report being merely to serve the purpose of verifying the fact that the accused had given the information in the form of the notes. There is no reason to suspect that that the notes relating to the discovery had been falsified as the accused himself had signed on the notes.

[29] It is clear from the above quoted passage that the learned judge directed himself on both the issue of credibility and accuracy. He gave cogent reasons for accepting the evidence of the police officers that the discovery statements were in fact made. In concluding that the information given was accurately taken

down by the officers concerned he took into account the discrepancies which have lay at the forefront of the attack by counsel before us. We find his direction on the s. 27 point to be impeccable. And we would respectfully add a further reason that supports the truth of the information provided by the second accused to PW14. It is this. The place where exh. P102 was found was used by the Field Force to dispose of hand grenades. As a former member of the Field Force there is a strong connection between him and the place chosen for the concealment of exh. P102 and thereby fortifies the evidence of PW14.

[30] This is how the learned judge applied the section to the facts of this case:

> To determine the extent to which the two sets of information can be admitted into evidence one has to fall back to the principle in Chong Soon Koy, to ask the two questions formulated therein by Suffian LP:
>
> (a) What was the fact discovered?
>
> (b) What was the information supplied by the accused relating distinctly to the facts thereby discovered ?
>
> In respect of the first accused, the fact discovered embraces the place from where the body was discovered and his knowledge about it, and the information supplied that relates distinctly to the facts discovered was that he had thrown it there.
>
> In respect of the second accused, it embraces the place from where the jewellery was discovered and his knowledge of it and the information supplied that relates distinctly to the facts was that he had hidden it there.

[31] We find the approach of the learned judge on this part of the case to be in accordance with the principles laid down by the former Federal Court in *Chong Soon Koy v. Public Prosecutor* [1977] 2 MLJ 78. It is plain that he asked himself the right questions and addressed the issues with eminent fairness. He excluded the words "which we took from the shop" which had formed part of the information provided to the police by the second accused on the ground that they did not come within the scope of s. 27.

[32] Based on the evidence led by the prosecution the learned judge held that both accused had a case to answer and called upon each of them to enter upon their defence. We are of opinion that he was entirely correct in his decision.

[33] Upon his defence being called the first accused elected to remain silent whereupon the learned judge found him guilty and convicted him on all four charges. His counsel submitted that his client had suffered a procedural injustice as the consequence of his electing to remain silent was not explained to him and as such the conviction could not stand. A careful perusal of the record provided to us shows that after the learned judge had made his order calling for the defence of the first accused, the three alternatives were explained to him. Of course, the record does not spell out each of them. But there is – and never has been – a rule of law or practice imposing such a requirement. What happens in the practice is that in all criminal trials, after defence is called, a clerk of court explains the consequence of each alternative to an accused. This is reflected in the notation "three alternatives explained to the accused" made in the notes of evidence without the judge or magistrates writing down each alternative. This has been the practice since time immemorial. It has worked well and there is no necessity to re-visit or alter it. From the record of appeal it is clear that this practice was adhered to in the proceedings before the learned judge. Accordingly, we are of the view that this submission is devoid of any merit. The first accused having elected to remain silent, the learned judge had no alternative except to convict him.

[34] The second accused elected to give evidence on oath. In brief, his story was that the shop was already lying open when he and the other two accused came upon it with the burglar alarm sounding. He and the third accused entered the shop and found it in a mess. The safe was empty. He and the third accused gathered up the jewellery that they could find and placed it in a bag. They then left the shop and went to the Police Field Force Ulu Kinta to hide the bag.

[35] The learned judge rejected this explanation after careful consideration. It was submitted by learned counsel that the circumstantial evidence at best only supports the inference that his client is a thief. It does not admit of an inference that he was involved in the murders. We do not agree.

[36] It is settled by authority that in a case where murder and robbery or theft form an integral part of a transaction, the recent and unexplained possession of the stolen property as in the present instance is evidence from which a court may draw the inference that the accused not only committed theft but also murder. Thus, in *Emperor v. Neamaulla* 17 CWN 1077 Jenkins CJ, referred to s. 114 of the Indian Evidence Act and quoted the following passage from *Wills on Circumstantial Evidence* (7th edn):

> … the possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has be connected with theft. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognised.

[37] In *Re Sogaimuthu Padayachi* AIR [1926] Mad. 638, (a case cited by the learned judge) Spencer J observed as follows:

> When the charge is that the accused committed murder or theft in a building or both, is it legitimate to presume that the accused are guilty of the more serious offence of murder because they are unable or unwilling to explain their possession of stolen property? I think the answer must be that if there is other evidence to connect the accused with the death of the murdered man, a jury, or in this country a Judge, may find upon circumstantial evidence that he is the murderer. But when the unexplained possession of stolen property is the only circumstance appearing in the evidence against an accused charged with murder and theft, the accused cannot be convicted of murder unless the Court is satisfied that possession of the property could not have been transferred from the deceased to the accused except by the former being murdered.

[38] More recently, in *Ganesh Lal v. State of Rajasthan* [2002] Cr LJ 967, Lahoti J (later CJ) when delivering the judgment of the Supreme Court said:

> Recovery of stolen property from the possession of an accused enables a presumption as to commission of offence other than theft or dacoity [that is to say, robbery under the Malaysian Penal Code] being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied: (i) The offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to

A have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting
B the accused with such other offence; (iv) caution on the part of the Court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance.

C …

[W]hen the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by
D itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an explanation. (See *Earabhadrappa v. State of Karnataka* AIR 1983 SC 446; *Gulab Chand v. State of Madhya Pradesh* AIR 1995 SC 1598).

E **[39]** Having considered the material in the record provided to us, we are satisfied that having regard to all the circumstances of the case, the theft or burglary or robbery – call it what you will – and the murders were an integral part of one and the same transaction. Put differently, this is not a case of a mere recovery of recently
F stolen property from an accused person. There are several other cogent pieces of circumstantial evidence which go to establish beyond a reasonable doubt that the first and second accused participated in the commission of the murders in the context of s. 302 being read with s. 34 of the Penal Code. They were all
G considered by the learned judge. Here are some of them. First, the nature of the injuries suffered by all four victims points to an intention on the part of the assailants to kill them. Of that there can be no doubt. Second, Balakrishnan's body though found a considerable distance away from the place where the bodies of
H Sathian and Juriah were found was bound by a similar rope as the latter. This fact points to a similarity in the modus operandi in the commission of the crimes. Whoever tied up Sathian and Juriah must have also tied up Balakrishnan. Third, the fact that Balakrishnan who ought to have been at the shop was found dead
I at a place some distance away. Fourth, the fact that the first

accused knew that Balakrishnan's dead body was at the aforesaid place. Fifth, the first accused's act of throwing Balakrishnan's body at the place where it was found. Sixth, the fact that the second and third accused were involved in the hiring of motor car PCV 7749. Seventh, this car was outside the shop at about 1am on 13 March 1998. Eighth, there were no signs of forced entry into the shop. The grilled door was closed but not locked. Three padlocks were found in the shop with the keys in them. Virama had taken the keys away with her and these were never found at her home. It follows, as a matter of deductive reasoning that the person or persons who entered the shop and removed the jewellery was also at the scene of the murders of Virama, Sathian and Juriah. Ninth, the second accused led PW14 and other police personnel to a place with which he was probably familiar as a former member of the Field Force and at which place he had hidden the jewellery stolen from the shop. Tenth, the first accused was found in a room rented by the second accused. This fact fairly supports and inference of complicity between the first and second accused.

[40] Learned counsel for both accused argued that each of the items of circumstantial evidence relied upon by the prosecution in support of its case did not establish a case against their clients. That may well be true; although we think that the finding of the keys in the shop and the evidence let in under s. 27 taken together present quite a formidable case against the accused. A similar submission as that now made to us was urged upon the Court of Appeal of Malaya in *Chan Chwee Kong v. Public Prosecutor* [1962] MLJ 307 and rejected. Thomson CJ said:

> In the first place we have listened to a careful, accurate and detailed analysis of the evidence against the appellant. That evidence was entirely circumstantial and what the criticism of it amounts to is this, that no single piece of that evidence is strong enough to sustain the convictions. That is very true. It must, however, be borne in mind that in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?

A This passage is, in our judgment, a complete answer to the complaint made by the accused in this case.

[41] We have read the record with care. We have carefully scrutinised the evidence. We have read and re-read the judgment B under appeal. Yet we are unable to detect any points in favour of the accused that went unconsidered by the judge. Indeed, we are satisfied that the guilt of the accused was proved beyond a reasonable doubt and that their convictions are safe.

C **[42]** In conclusion we would commend the police personnel involved in the investigation of this case. They acted with the required speed and gathered evidence in a thoroughly professional fashion. In particular we would mention the outstanding efforts of Inspector Buba Garan, ASP Ravinder Singh, Inspector Azli, D Seargent Malek, Corporal Che Jusuh Inspector Zaim, Inspector Poonam and Corporal Ishak. It is their investigative work that enabled the accused to be brought to justice. We direct the Registrar of this Court to send a copy of this judgment to the Inspector General of Police with a view to drawing his attention E to the commendable work done by these officers.

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